NTCA
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
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October 28, 2008

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

***Ex Parte* Written Notice:**

***In the Matter of Developing a Unified Intercarrier Compensation Regime, WC Docket No. 01-92; In the Matter of the High-Cost Universal Service Support and Federal-State Joint Board on Universal Service, WC Docket 05-337 and CC Docket 96-45; IP-Enabled Services,* WC Docket No. 04-36.**

Dear Ms. Dortch:

On Thursday, October 23, 2008, Tom Fisher, Don Jenning, Heath Mallory, and Don Miller with the Rural Iowa Independent Telephone Association (RIITA) and Daniel Mitchell with the National Telecommunications Cooperative Association (NTCA) met with Commissioner Michael Copps' Legal Advisor, Scott Deutchman, to discuss issues in the above referenced proceedings. NTCA urged the Commission to address the CORE Remand narrowly and strongly oppose Chairman Martin's undisclosed All-In-One Intercarrier Compensation (IC) and Universal Service Fund (USF) Proposed Order. To the best of our understanding, the following is a description of the proposed order's major provisions and their negative impact on affordable broadband, consumers, and the rural carriers that served the high-cost areas throughout the United States.

1. Universal Service - The proposed Martin order contemplates freezing a company's universal service support at December 31, 2008 levels for a period of five years. During this period, additional interstate common line support (ICLS) could be made available to a company for rate and demand decreases based on a showing of both intrastate and interstate costs. No additional USF, however, would be available for investments during the five year period and companies would not be able to recover investments made during 2007 and 2008 because the December 31, 2008 payments are based on 2006 financial data. Such a proposal penalizes rate-of-return (RoR) rural LECs that are investing in their networks to ensure that rural consumers in their service areas are able to receive voice and broadband services that are comparable in price and scope to those available to their urban counterparts. This proposal will have a chilling effect on future broadband investment in high-cost areas and will make it more difficult to pay back loans to the

Rural Utility Service (RUS), CoBank and Rural Telephone Finance Cooperative (RTFC) which are the traditional lenders to RoR rural LECs. (See, attached letters from CoBank and RTFC.)

Also, under the proposed Martin order National Exchange Carrier Association (NECA) average schedule companies would be prohibited from converting to cost companies prior to the implementation of the proposed plan. This would unfairly penalize hundreds of average schedule companies and prevent them from possibly receiving high-cost universal service funding (USF) to assist in the deployment and maintenance of broadband infrastructure throughout their service territories. At the end of five years, a company would then have to be 100% broadband capable at a rate of 768kps down/200kps up or lose its universal service risk losing its USF support through an undefined reverse auction which will likely leave rural consumers with the worst quality broadband service or no broadband service.

2. Access Rates – The proposed Martin order would have State Commissions set intercarrier compensation rates under a new pricing methodology specified by the FCC. Terminating rates, transport and switching, will be transitioned down over a ten year period. In the first two years, intrastate rates will go to interstate levels. In the third year, all traffic would be unlawfully classified as reciprocal compensation. The proposed order does not address originating, thus originating access would be eliminated. Rates will move to reciprocal compensation levels using a new Faulhaber pricing methodology which does not include common costs or investment-related costs. Rates are expected to be lower than $.0007 per minute and will likely be the same for all carriers in a state. States will not be bound by specific rate benchmarks. Tariffs and the NECA switched access pool would exist until the third year, at which time commercial agreements would have to be put in place to recover reciprocal compensation rates which will likely eliminate the NECA pools. Originating access charges are not addressed, which exposes $1 billion in annual revenues to non-recovery. In addition, originating 800-traffic will be carried by the rural LECs free of charge. In essence rate-of-return regulation and the cost-based rates regulatory compact between rural LECs and the FCC and State Commissions will be eliminated.

3. Interconnection Requirements - The proposed martin order contains the AT&T/Verizon interconnection specifications contained in an ex parte letter of October 14, 2008. These interconnection rules are similar to the previous AT&T Edge requirements. The Rural Transport Rule negotiated as part of the Missoula Plan is not part of the Martin proposed interconnection rules. Because the proposed Martin order does not have a Rural Transport Rule it will expose many rural LECs to significantly higher transport costs in the future. Companies may be required to carry traffic to distant points of interface (POIs) hundreds of miles away. This will put many rural LECs out of business.

4. VoIP - The proposed Marin order recommends a rule stating that interconnected voice over the Internet protocol (VoIP) traffic is an information service and thus will not be subject to access charges. A formal ruling that Interconnected VoIP service will pay no access charges will result in a super-arbitrage scenario where AT&T, Verizon and others will reclassify, retariff, or reconfigure all their current PSTN Voice Service to Interconnected VoIP Service and avoid paying any terminating access charges in the future. The potential of $4 billion in terminating access savings is a windfall for AT&T and Verizon and yet will be a death knell for many rate-of-return rural LECs. The Commission instead should adopt an order that requires all interconnected VoIP providers that terminate calls on the public switched telecommunications network (PSTN) to pay access charges.

5. Subscriber Line Charges (SLCs) – Under the proposed Martin order, residential SLCs will increase $1.50 per month to $8.00 and business SLCs will increase $2.30 to $11.50 over the next two years. This unfairly punishes residential and business consumers and places rural LECs at a competitive disadvantage compared to their wireless and cable competitors.

6. USF Contributions – The proposed Martin order would abandon the revenue assessment contribution methodology and instead set residential USF contributions at $1.00 per working number. Broadband and IP numbers will not have to contribute. The proposal is backward looking basing USF contribution on legacy voice telephone numbers and thereby limiting support for broadband in the future. The future USF contribution methodology should be based on broadband revenues and/or connections and USF support should be focused on building and maintaining the best broadband infrastructure in the United States rather than providing the cheapest and poorest quality broadband services to consumers when compared to the rest of the world.

7. Price-Cap Savings Without Corresponding Offsets For Consumers – The proposed Martin order does not but should require that any access replacement support received by a price cap carrier should be offset by access expense savings the carrier's long-distance affiliate receives.[1] The cost reductions through lower terminating access rates paid by price cap carriers through their long-distance affiliates should be used to offset any access replacement support received by price cap carriers. Price-cap carriers, such as AT&T and Verizon, should not receive windfalls as a result of access rate changes. Furthermore, the impact of intercarrier compensation reform on the size of the universal service fund should be as minimal as possible, as would be accomplished by accounting for the access savings realized by these companies.

8. Price Cap Tandem Switching Should Be $0.0007 Per-Minute Or Less. If the Commission determines that it has legal authority to set a price cap carrier non-cost-based terminating switched access rates at $0.0007 per minute because price cap carrier rates are already non-cost-

[1] *See the Sprint Ex Parte Letter* filed in CC Docket No. 01-92, and WC Docket No. 04-36, footnote 2, August 7, 2008.

based, then the Commission must also apply the non-cost-based $0.0007 per minute rate to all price cap carrier switching, including tandem transit service. The tandem transiting rate proposed in Step 2 of the Missoula Plan capped the tandem transit service rate for price cap carriers at $0.0025 per minute, and allowed this rate to increase annually by inflation at Step 5.[2] Since the price cap carriers who signed onto the Verizon, AT&T, et al. coalition letter believe that a local switching rate of $0.0007 per minute is adequate, it then follows that transiting rates, a similar switching function, should also be set at $0.0007 per minute.[3] Moreover, the volume of minutes traversing a tandem switch is much higher than that of a local central office switch, therefore that the Commission could set price cap tandem transiting rates at levels much lower than $0.0007 per minute.
Reducing price cap carrier tandem transiting rates below $0.0007 per minute would provide further savings for IXCs, VoIP providers, and consumers.

9. Special Access Transport to the IP-Backbone Should Be Cost-Based to Help Consumers Afford Broadband. The proposed order also should require all large, vertically-integrated communications carriers, such as AT&T and Verizon, to provide non-discriminatory, cost-based special access transport services needed to reach the Internet backbone. Increasing special access transport costs to the Internet backbone can harm rural consumers and RoR carriers and the problem worsens when those carriers must purchase special access services from large vertically integrated companies to connect their customers to the Internet backbone.[4] These costs as well as the IP costs associated with the middle mile[5] and the Internet backbone itself are significant costs of providing broadband service in rural areas and must be addressed in any

[2] See the July 18, 2006, Executive Summary of The Missoula Plan, pages 11 and 12, filed in CC Docket 01-92.

[3] Transiting includes tandem transit service which is a switched transport service provided by a third party carrier using its tandem switch to effectuate indirect interconnection between two carriers within a local access transport area (LATA)(or in Alaska, within a local calling area). Tandem transit service also includes both tandem switching and tandem switched transport (also called common transport), or the functional equivalent, between the transit tandem location and the edge of a terminating carrier's network. Where the terminating carrier is an ILEC and the tandem transit provider interconnects with the ILEC at a meet point, tandem transit service stops at that meet point.

[4] Federal-State Joint Board Recommended Decision, p. 15.

[5] National Exchange Carrier Association (NECA), *Middle Mile Broadband Cost Study*, October 2001. NECA's findings were dire—concluding that high-speed Internet service is uneconomic in many rural areas. NECA further found that increased IP traffic will exacerbate, rather than ameliorate, the problem, as existing revenue shortfalls are multiplied as the scale of operations increases. For example, the study shows revenue shortfalls at $9.7 million per year at a 0.5% penetration rate, growing to $33.6 million per year at a 5% penetration rate, $49.8 million at a 10% penetration rate, and $63.8 million per year at a 15% penetration rate. NECA's sobering conclusion: "high-speed Internet service may not be sustainable in many rural areas based on pure economics. *See NECA Middle Mile Cost Study Executive Summary*, www.neca.org/source/NECA_Publications_1154.asp.

comprehensive reform.[6] To achieve and maintain the goal of universal affordable broadband service for all Americans, the Commission should regulate the terms, conditions and prices of Internet backbone services, including special access transport needed to reach the Internet backbone, to ensure that large, vertically-integrated Internet backbone providers do not abuse their market power by imposing unfair and discriminatory pricing on small, rural communications carriers providing retail high-speed Internet access service in rural, insular and high-cost areas of the United States. The FCC has already adopted some of these conditions as part of the FCC's approval of the AT&T/BellSouth merger.[7] NTCA urges the FCC to broaden these conditions in the future.

10. Wholesale Long Distance Services Should Be Cost-Based to Reduce Consumer Retail Long-Distance Rates. Rural LECs throughout the United States have been notified by both ANPI and TDN that the underlying long distance carriers are dramatically increasing our wholesale rates. These rates are going up over 40% making it extremely difficult for rural LECs to offer all-you-can-eat bundles. Specifically, ANPI included the following in its notifications: *In closing, as noted over the past several months, it is clear that IXCs are working in unison to raise rates, and introduce monitoring mechanisms and administrative best practices to limit the prospect for conditions in which access exceeds toll costs. All carriers are absolutely committed to addressing this issue, and re-indexed toll rates simply represent our rapidly unfolding reality.* With access cost reductions to IXCs, the cost of wholesale long distance service should also decrease and be cost-based.

Conclusion - The Commission should reject the proposed Martin order. RoR rural LECs are making good on their promise to deliver broadband services to rural areas.[8] Rural LECs have made significant investments in the rural high-cost portions of America under an existing universal service support system that allows for recovery of a sufficient portion of a carrier's embedded costs of total regulated facilities. If these costs are no longer recovered through access charges and/or universal service, and an alternative recovery method is not available or is

[6] Special access transport includes, among other services, packet-switched broadband services, optical transmission services (e.g., frame relay, ATM, LAN, Ethernet, video-transmission, optical network, wave-based, etc.), TDM-based services (e.g., DS-1, DS-3, etc.), and other future transport services to reach the Internet backbone.

[7] *In the Matter of A&T and BellSouth Corporation Application for Transfer and Control,* Order on Reconsideration, Appendix, Page 5, WC Docket No. 06-74, (rel. March 26, 2007).

[8] *NTCA 2007 Broadband/Internet Availability Survey Report,* September 2007, www.ntca.org.

prohibited by regulators, then these costs will become stranded investment.[9] As Commissioner Copps stated:

> [i]t is essential, that any regime we adopt increase certainty so that rural carriers can plan for the future and undertake necessary investment to modernize the telecommunications infrastructure in their communities.[10]

Given the Act's goal of preserving and advancing universal service to ultimately provide consumers with access to advanced telecommunications and information services, failure to address stranded cost would be completely at odds with the intent of Sections 254 and 706 of the Communications Act of 1934, as amended.

NTCA urges the Commission to reject the Martin Proposal because it will significantly harm rural consumers, unlawfully preempt the states, and result in an unlawful taking of RoR carrier property. Unlike price cap carriers whose switched access, transport and transiting rates are non-cost-based, RoR carrier switched access, transiting, and transport rates are cost-based and are approved by the FCC and state commissions and allocated to the interstate and intrastate jurisdictions under the FCC's federal/state separations rules pursuant to Section 2 and 410 of Act. The proposed unification of all terminating interstate, intrastate, and local/reciprocal compensation access rates to a ***non-cost-based per minute rate*** for RoR carriers, therefore, would violate federal and state approved cost-based rate-of-return ratemaking and separations requirements under Section 410, violate the States authority to set intrastate rates under Section 2 of the Act, and violate the takings clause in the 5th Amendment of the United States Constitution. The proposed Martin order would be extremely harmful to rural consumers served by RoR carriers.

Lastly, the Regulatory Flexibility Act (5 U.S.C. §601) requires the FCC to consider alternative rules that will reduce the economic impact on small entities, such as RoR rural carriers. NTCA's USF and IC reform recommendations would reduce the economic impact on small RoR broadband providers and rural consumers. NTCA's proposals would also allow the Commission to meets its regulatory responsibility, promote the public interest, convenience, and necessity,

[9] The term "stranded investment" typically means plant facilities that are no longer in use and have not fully recovered their costs. However, in the context of this proceeding, stranded investment can result in plant facilities that are not fully recovering their costs but are still in use.

[10] *In the Matter of the Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* CC Docket No. 00-256; *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45; *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation,* CC Docket No. 98-77; *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers,*(2001)(MAG Order)*, Dissenting Statement of Commissioner Michael J. Copps.*

spur development of new advanced communications technologies and broadband deployment, and most importantly ensure that consumers living in rural high-cost areas are able to receive high-quality, affordable voice and broadband services.

NTCA therefore urges the Commission to reject the Martin proposal and alternatively issue a public notice and seek comment on the NTCA proposal and other lawful proposals submitted in this proceeding. NTCA's April 17, 2008 and July 11, 2008 proposals filed in these dockets will make certain consumers living in rural high-cost areas are able to receive high-quality, affordable voice and broadband services. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter and the enclosed written ex parte is being filed via ECFS with your office. If you have any questions, please do not hesitate to contact me at (703) 351-2016.

Sincerely,

/s/ Daniel Mitchell
Daniel Mitchell
Vice President, Legal & Industry

DM/rhb
Enclosures

cc: Commissioner Jonathan Adelstein
Commissioner Michael Copps
Commissioner Robert McDowell
Commissioner Deborah Taylor Tate
Scott Deutchman
Scott Bergmann
Nicholas Alexander
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RTFC

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September 30, 2008

Chairman Kevin Martin
Commissioner Michael Copps
Commissioner Robert McDowell
Commissioner Jonathan Adelstein
Commissioner Deborah Tate

Dear Chairman Martin and Commissioners:

It has come to our attention that a coalition of large telecommunications industry players, including Verizon and AT&T has proposed that the FCC establish a unified $0.0007 terminating access rate for both price cap and rate-of-return carriers. The Rural Telephone Finance Cooperative (RTFC) strongly opposes this proposal. A key lender to the rural telecommunications industry, RTFC currently has over $2.2 billion committed to rural telecommunications companies and cooperatives. Without adequate access revenues, rural telecommunications providers (overwhelmingly rate-of-return carriers) may not be able to repay their existing loans or qualify for new loans.

While RTFC primarily lends to rural telcos for infrastructure modernization and takes a first lien on a borrower's assets, in actuality it is the borrowing telco's level of cash flow that provides us with the truest indicator of its ability to repay the loan. As such, RTFC is very sensitive to potentially significant decreases in key revenue sources.

Access revenues recover a significant portion of a rural local exchange carrier's (RLEC's) costs. According to Professor Dale Lehman's recent study of NECA data on 921 rural local exchange carriers[1], 31% of their regulated revenues came from inter-and intrastate access. If RLECs' terminating access rates are arbitrarily reduced to (a non-cost-based) $0.0007 per minute, rates for other services will have to be significantly increased to make up for the revenue loss. Higher Subscriber Line Charges or local service rates increase the burden on the local ratepayer and increase the likelihood that economically challenged customers who have wireless service will drop their wireline service.

A number of proposals for unifying intercarrier compensation have been proposed and never acted upon in recent years. None were as drastic as what has been proposed by Verizon and AT&T. This plan may work for price cap carriers, but it would be a disaster for RLECs.

[1] <u>The Next Three Years: Likely Scenarios for Rural Local Exchange Carriers</u>

As an entity extremely familiar with the financial condition of RLECs, RTFC can say unequivocally that the Verizon/AT&T plan for a unified terminating access rate of $0.0007 per minute would end most RLECs' plans for extending increased bandwidth to their customers and negatively impact their ability to repay existing loans. We urge the Commission to reject this proposal and not adopt any intercarrier compensation reform plan that fails to provide for a mechanism to allow RLECs to meet their revenue requirements.

Sincerely,

Lawrence Zawalick
Senior Vice President
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September 30, 2008

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, D.C. 20554

Ex Parte Notice

RE: Developing a Unified Intercarrier Compensation Regime
CC Docket No. 01-92

IP-Enables Services
WC Docket No. 04-36

Dear Ms. Dortch,

CoBank, ACB ("CoBank")[1] urges the Federal Communication Commission (the Commission) to proceed with the utmost care regarding the forthcoming ISP Remand Order. When addressing intercarrier compensation reform, it is critical to consider the rural consumers who rely on rural telecommunication carriers to receive their services. The Commission should ensure that all consumers have access to affordable telecommunications services and the latest technologies – no matter where they live. Technology is only useful when it is affordable to consumers.

CoBank is a cooperative bank with over $3.4 billion in loan commitments to over 200 rural communication companies nationwide. These commitments by sector are comprised of incumbent local exchange carrier (ILEC) (75%), wireless (11%), cable television (12%) and competitive local exchange carrier (2%). In addition, CoBank has syndicated $750 million of communication loans to other financial institutions in the Farm Credit System. The Farm Credit System is a unique cooperative network of customer-owned lending institutions that is exclusively dedicated to improving life in rural America.

[1] CoBank, a $62 billion Denver-based cooperative bank, provides financing to rural cooperatives and critical lifeline businesses – food, water, electricity and communications – across the United States. Part of the $208 billion United States Farm Credit System, the bank also finances agricultural exports. CoBank consistently demonstrates our focus on rural America. We consistently demonstrate our focus on rural America, repeatedly strive to be the trusted advisor for our customer-owners, provide a consistent return on their investment and ownership in CoBank.

In order to provide rural customers the communication services needed to compete in a global economy, rural ILECs rely upon high-cost universal support and intercarrier compensation for a substantial portion of their cost recovery. It is imperative that reform of the rules for these revenue streams take into account the unique characteristics of rural ILECs and their service areas.

CoBank is concerned that proposals like the AT&T and Verizon proposal on terminating access rate do not address the operating characteristics of rural ILECs. The AT&T and Verizon proposal on terminating access rate will make it difficult for rural ILECs to provide rural consumers with a full array of affordable basic and advanced communications services, comparable to price and quality to those offered in urban areas.

CoBank's rural communications customers are committed to providing innovative, high quality, vital infrastructure to meet the demands of its consumers. Our rural telecommunications customers need comprehensive reform of intercarrier compensation, not the adoption of piecemeal proposals.

Respectfully submitted,

CoBank, ACB

By: /s/ Robert S. West
Robert S. West
Senior Vice President and Manager, Communication Division